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County of San Luis Obispo



January 25, 2007

Chief John Couch
Atascadero Police Department
5505 El Camino Real
P.O. Box 911
Atascadero, CA 93422

Re: Officer Involved Shooting Investigation and Findings
City of Atascadero / 9377 Bocina Lane [Bordeaux Apartments]
Apt. F, Atascadero, CA
Atascadero Police Department
Atascadero Police Department Case No. 06-3391
SLO County DA Case No. 06- 10131
Shooting Officer: Wyatt Kasfeldt
Other Involved Officers: Greg Meyer, Keith Falerious
Deceased Person: Richard Daniel Pope, DOB: 9/5/1963
Date of Incident: November 18, 2006
DA Case opened at your request: December 5, 2006

Dear Chief Couch:

The District Attorney's Office has completed its independent investigation and review of the above referenced officer involved shooting. Our review does not address issues of civil liability, police tactics, or departmental policies or procedures. We address only whether the case presents a basis for criminal prosecution against the involved officer(s) in connection with the shooting and death of Mr. Pope. When making a charging decision, there must be present sufficient evidence to prove the charge(s) beyond a reasonable doubt to a trier of fact. (Uniform Crime Charging Manual, California District Attorney's Association.) For the reasons set forth below, we conclude that the evidence in this case does not support further action by the District Attorney's Office.

Written reports and other documentary items were reviewed. These consisted of:

1. Atascadero Police Department investigative reports, case no. 06-3391, (crimes involving domestic violence) supplemental reports, and attachments thereto, and case no. 06-3395, (officer involved shooting investigative reports) supplemental reports and attachments thereto;

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2. Photographs of the location/shooting scene, autopsy/other relevant photographs;
3. San Luis Obispo Sheriff's Department reports, case no. 061190468; Coroner's Report No. 15289;
4. State of California, Department of Justice, Bureau of Forensics Services report no. SB-06-002628-0001;
5. District Attorney investigation interviews with Officer Wyatt Kasfeldt, Sergeant Greg Meyer, Senior Officer Keith Falerious;
6. Pathology Report No. A06-000662; and
7. Central Valley Toxicology Report No. CVT-06-12289.

Additional information included:

8. Personal observations of the area where the incident occurred at approximately 4:30 a.m. and thereafter on November 19, 2006, including on-scene discussions with investigating personnel.

Additional further inquiry was made, including the following:

9. I have also met and spoken with Detective Jeffrey Wilshusen, Atascadero Police Department, the investigating officer.
10. District Attorney Senior Investigator Chuck Denchfield independently reviewed the documents, reports, and other items that were submitted pursuant to our office policy. I have also met with and discussed the facts with him and with other assigned District Attorney Investigators.

In reviewing the reports, statements, documents, and other items that were presented, any internal inconsistencies contained in witness statements and discrepancies between various witnesses' statements were considered. I also considered what each witness was able to see, hear or otherwise perceive as established by the record.

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I.
FACTUAL SUMMARY

A.
DETAILED CHRONOLOGY

1. Crime Report by domestic violence victim regarding Pope's criminal conduct on November 17, 2006

Police report #063391 was taken by Atascadero Police Officer Glen Pauls on November 18, 2006, at 12:42 p.m. Officer Paul spoke with a reporting party/victim [REDACTED] [REDACTED] at the Atascadero Police Department. The victim stated: that she and her live-in boyfriend, Richard Pope, had been in a verbal argument on November 17, 2006, at approximately 4:30 p.m. Pope grabbed her and pinned her to the couch, restricting the victim's movements. Pope yelled obscenities at her and demanded that they talk about their relationship. After about 20 minutes, he released his grip and she was able to later leave the apartment. Her right bicep had pain, but she had no visible marks or injuries. She did not seek medical attention.

The victim stated that the night before this incident (November 16, 2006) that Pope was very aggressive, angry, and had punched holes in the walls.¹ Pope had stated to her that nothing else mattered to him without their relationship. The victim expressed concern that Pope might harm himself. She stated that she did not call the police earlier because she did not want to get anyone hurt or put him [Pope] in danger because it was dark outside and that Pope was really agitated.

Prior to making the police report the victim left a message on the apartment answering machine for Pope. The message was: "I want you to leave my apartment; I will be there at one o'clock [p.m. on Saturday] with the police." She never spoke directly with Pope since she had left the apartment on November 17, 2006, at approximately 11:00 p.m.

[REDACTED] reported that she owns a Browning .308 caliber rifle with a scope which she stores in the closet in the apartment. She stores ammunition for it in the closet of a spare bedroom in the apartment. She had never given Pope permission to use or to possess the rifle and that Pope knew the location of both the rifle and the ammunition. She

¹ Photographs of the interior of the apartment depict holes in random areas in the drywall consistent with fist marks.

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stated that Pope is an ex-law enforcement officer and was on a "special response team." She stated that "he still has that mind set and mentality" that of "being in control."

While the victim was still at the police station Officer Pauls attempted to contact Pope by telephone at the apartment. [REDACTED] stated that an answering machine should pick up if he did not answer. The telephone rang numerous times with no answer. The officer attempted calling three times within an hour with no response. [REDACTED] voiced concern for Pope's safety and stated that Pope had previously made threats of self harm and that he has previously consumed alcohol to the point of passing out.

Officer Pauls asked [REDACTED] if she wanted officers to check Pope's welfare, to which she stated, "Yes." She also wanted officers to standby while she retrieved property and told Pope to move out. She gave officers permission to enter her apartment and gave them a key. She also gave officers permission to recover her rifle and ammunition for safekeeping. Officer Pauls explained to her the purpose of an Emergency Protective Order (EPO) which she wanted the officer to obtain. At 2:00 p.m. Officer Pauls then contacted Superior Court Commissioner Perry and obtained an EPO which ordered Pope to immediately move out of the apartment and to stay 50 yards away from [REDACTED]. At approximately 3:00 p.m., [REDACTED] left the police station and was advised not to go back to the apartment.

Officer Pauls discussed the situation both with his sergeant and with a senior police officer. The decision was made to conduct a welfare check on Pope and to serve him with the EPO as well. At 3:55 p.m. the officers went to Pope's apartment. They had a description of Pope's vehicle from [REDACTED] which they looked for but did not observe anywhere in the area. They then approached the door of the apartment and knocked but got no response. No one was present in the apartment. They checked the locations described by [REDACTED] for the rifle and ammunition. They located neither but found an empty ammunition box in the closet of the master bedroom.

The officers observed a message written on an eraser board located on the refrigerator which stated: "I put everything into you, you are now a mark, the mission will now be completed. You told me you were going for a drive and you would be back?? xxx." Officer Pauls also observed a large butcher knife stuck in the kitchen above the sink.² The

² Initial photographs taken by Officer Paul at approximately 4:00 p.m. on Saturday, 11/18/06 depict one knife stuck in the kitchen wall. Photographs taken of the interior of the apartment after the shooting incident depict two knives stuck into the wall above the kitchen sink. The apartment unit also appears in disarray with what appears to be empty wine bottles in the kitchen sink as well as other alcoholic beverage bottles in other locations in the apartment.

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apartment was in disarray. Officer Pauls photographed the interior of the apartment unit which photographs also depicted holes in the walls as described by [REDACTED].

Upon returning to the station, Officer Pauls requested dispatch to send a countywide officer safety "Be on the Lookout" [BOL] bulletin regarding Pope. The BOL, which was put out at 6:38 p.m. on November 18, 2006, stated, in relevant part.

"...BOL officer safety - 836 for 422 PC 487 PC of firearm/236 P.O. ...

[Suspect and vehicle description was given.]

Suspect is a former police officer from Southern California and was recently released from parole in August for 273.5 P.C. ... He took a Browning rifle with scope... along with ammo. Suspect stuck a butcher knife in the wall on (sic) left a note saying she is now a 'mark' and 'the mission will now be completed.' EPO also issued

[Described victim and her location.]

If located, stop, detain and verify this agency..."

Officer Pauls re-contacted [REDACTED] and advised her that they did not locate Pope, the rifle, or the ammunition. He advised her of the message Pope had left and the butcher knife stuck in the wall. [REDACTED] stated that the situation was more serious than she had thought and took Pope's message and the knife to be a threat. She expressed fear for her safety and stated that she would stay at a location unknown to Pope.

Based on the above, including Pope's message, the missing rifle and ammunition, Pope's past history of aggressive behavior and the victim's fear for her safety. The knife stuck in the kitchen wall and the holes punched in the walls. Officer Pauls prepared an 836 PC arrest without warrant form for Pope's arrest for PC 236, false imprisonment, PC 273.5, Corporal Injury to a Co-Inhabitant, and PC 422, criminal threats. Officer Pauls met with and advised Sgt. Meyer and the rest of the graveyard shift of the events leading up to the request for the arrest of Pope pursuant to PC 836.

While the other officers, including Sgt. Myers and Officer Kasfeldt, were receiving the briefing from Officer Pauls, Senior Officer Falerios stated that he had had prior contacts with Pope for drug and alcohol abuse. Officer Falerios reiterated that Pope was a former police officer where he had been on a tactical team. Officer Falerios also stated that Pope had a history of violence with his spouse.

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2. Facts and Information known to Officer Kasfeldt

On November 21, 2006, Officer Kasfeldt was interviewed by District Attorney Chief Investigator Bill Hanley and Senior District Attorney Investigator Chuck Denchfield regarding the facts and circumstances that were known to him prior to and at the time of the shooting incident. His attorney was present during the interview. Officer Kasfeldt relayed the following:

Officer Kasfeldt has been employed as a police officer with the Atascadero Police Department for three years. This is his first police employment. He attended the Alan Hancock Law Enforcement Academy and has had additional in service training in the use of force and force options and active shooter training.

On Saturday, November 18, 2006, he was on duty from seven o'clock p.m. to seven o'clock a.m. When he reported for his shift he was wearing a full police uniform consisting of: a short sleeve dark blue uniform shirt with a badge and name tag affixed and with departmental patches on each shoulder. He also wore a radio with a microphone attached to his shirt and an earpiece. He wore dark blue cargo-style pants and black boots.³

When he reported for his shift at 7:00 p.m., he attended a regular briefing in the watch commander's office. Others present included the senior officer, Keith Falerious, and the Sergeant who was his shift supervisor, Greg Meyer. One of the briefing topics included information regarding an individual by the name of Richard Pope.

During briefing, Sergeant Meyer related that there had been an "836 for a 422 and a 236, 243(1)".⁴ Sergeant Meyer informed the officers that Pope had previously been on parole for domestic violence, that he had been a former police officer for a number of years, that he was SWAT trained, that he had been fired, and that Pope had battered his then wife and had spent two years in prison.⁵

³Officer Kasfeldt was wearing this same uniform at the time of the shooting incident.

⁴This refers to the request for an arrest without a warrant [Penal Code § 836] for violations of Penal Code § 422 (criminal threats), Penal Code § 231 (false imprisonment), and Penal Code § 243(1) (battery on a co-inhabitant).

⁵The description of Officer Kasfeldt's recollection of the information which was discussed at the briefing is provided to illustrate Officer Kasfeldt's state of mind as described in his interview on 11/21/06, three days after the shooting incident. Other officers who were present at the briefing may have related additional information in their interviews and/or reports, referred to below, based upon their individual recollections.

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Officer Kasfeldt stated that during the briefing day shift officers stated that, earlier that afternoon, they had gone to the apartment unit to check on his welfare. The female victim had given the officers keys to the apartment and permission to enter. The female victim informed the day shift officers that there was a rifle in the apartment which belonged to her. The rifle was described as a .308 caliber with a high power scope. She informed the officers that the rifle was in their apartment unit [shared by her and Pope] along with a full box of ammunition. The officers formed a tactical plan and made entry into the apartment unit. Officer Kasfeldt learned that when the officers searched the apartment the .308 caliber rifle was missing. However, the officers located an empty .308 caliber ammunition box.

Based on this information, Officer Kasfeldt and the other officers on his shift were given a description of Pope, were shown a photograph of him, and his vehicle was described. The officers were told that if they did locate Pope or his vehicle to "use very much caution" and to radio for other officers to respond.

During briefing, the officers were also told that when the apartment was entered and searched, the officers observed a note in the apartment which was discussed during briefing. Officer Kasfeldt understood the contents of the notes as: "something to the effect of . . . you said you were going to the police . . . you fucked up . . . you're fucking dead. I'm gonna kill you, you're a mark, again using a sniper term."

After briefing, Officer Kasfeldt began his patrol duties. Between 9-9:30 p.m., he was called back to the station for supplemental information regarding this case. At the station, he was told to contact a [REDACTED]. He looked up the case number regarding the above individual and saw that she was the victim in the case [involving Pope as the suspect] about which he had been briefed.

He called [REDACTED] who informed him that she had checked her bank statement on-line and observed that a transaction had been made earlier in the day presumably by Pope. She also told Officer Kasfeldt that "previously that he [Pope] had told her that when she tried to leave him that he [Pope] was going to drive his vehicle, his jeep, off the breakwater in Morro Bay, in order to kill himself."

Officer Kasfeldt informed his sergeant about this additional information and also called the Morro Bay Police Department. Shortly thereafter, when Officer Kasfeldt went back to the dispatch area in the station, [REDACTED] called back and spoke with Officer Kasfeldt. She said that he [Pope] might be at the apartment. She stated that a neighbor

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had just called her [at a location where she was staying] and told her that Richard Pope was now back at the apartment.⁶

While he was speaking with her on the telephone, Officer Kasfeldt heard his Sergeant simultaneously on the police radio state: "I'm in front of 9377, the vehicle's there" [referring to Pope's blue jeep], which vehicle had been described at the earlier briefing.

Upon receiving that information, Officer Kasfeldt stated that he "was at a full sprint outta the department 'cuz I was afraid if my sergeant was there alone, something bad can happen." He related that the last information the officers received was that Pope had a high powered rifle with a scope, which rifle had greater power than the weapons the officers carry.

Officer Kasfeldt immediately went to the location of Pope's apartment building and confirmed where Pope was located. "We were set up probably 75-100 yards from the apartment. We had a visual of his apartment . . . we could see that there were no lights on in the apartment . . . the front door was closed . . . all the blinds were closed."

Due to the time of night it was dark. Officer Kasfeldt described the outside of the apartment building as "very well lit with every apartment . . . very bright, white lights on the carports." He described the corridors on the outside of the apartment complex as "very well lit" and that "it is hard to find any place that is dark."

Officer Kasfeldt discussed with Sergeant Meyer what to do. They decided to call Senior Officer Keith Falerious to respond to where they had set up a perimeter. They were concerned that Pope, an ex law enforcement officer, had a scanner and could listen to the police radio conversations. To avoid that possible occurrence, Officer Kasfeldt called Officer Falerious using his cell phone to inform him what [REDACTED] had told him regarding Pope being there and that they needed assistance immediately. Sergeant Meyer then called their investigative sergeant who was on their SWAT team and also called the Sheriff's Department for assistance.

Sergeant Meyer told Officer Kasfeldt that he was thinking about "setting up a perimeter and then trying to call [telephone] into the residence." The officers wanted to set up a perimeter and have present enough officers in the event that they called the apartment and Pope came out shooting so that there would be "enough officers present to handle the situation."

⁶The apartment is located at 9377 Bocina Lane, Apartment F, the "Bordeaux Apartments" in Atascadero, which address and location were known by Officer Kasfeldt.

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When Officer Kasfeldt arrived he described going to the "southeast side" of the apartment. Officer Kasfeldt heard on the police radio the Sheriff's Department dispatch the call to Sheriff's Deputies to assist them "serving an 836 on a high risk subject."

The Sheriff's Department sent two two-man cars to assist. Sergeant Meyer then moved his patrol vehicle further back so the command vehicle "wouldn't be destroyed and the equipment in it . . . if he [Pope] started shooting it." During that time, Officer Kasfeldt watched the apartment unit while Sergeant Meyer instructed the Sheriff's Deputies where to go.

From his position Officer Kasfeldt observed the lower portion of the stairwell leading to Pope's apartment unit as well as the upstairs apartment window which he said he knew was the master bedroom which faced out towards Bocina Lane. Officer Kasfeldt also was able to observe the lower apartment unit. Officer Falerious was nearby Officer Kasfeldt along with two Sheriff's Deputies. Sergeant Meyer had directed two Sheriff's Deputies "across the road in a position of safety . . . to the back sides of that apartment . . . to watch the balcony . . . the rear balcony . . ." The officers had decided that once the officers were in position that Officer Kasfeldt would quickly drive his patrol car across the front of the apartment down to where Pope's vehicle was found, which Officer Kasfeldt estimated to be about 50-75 yards south of Pope's apartment unit. Officer Kasfeldt parked his patrol car in such a position so as to block Pope's car so that Pope could not use it to escape.

Officer Kasfeldt reiterated that they had probable cause to arrest Pope for felony offenses, that Pope had made threats, that they were at "high alert on that" because of the known weapon and Pope's reported propensity for violence.

Before Officer Kasfeldt moved his patrol car he obtained his departmental issued rifle, an "M16 A1," from the vehicle. Officer Kasfeldt had had the same rifle assigned to him during his entire tenure as an Atascadero police officer. He described the rifle as an "AR15" from which the "fully-automatic pin had been removed" which disallowed the rifle to be fired as a fully automatic weapon.⁷ Officer Kasfeldt's rifle had "open sights" with night sighting capabilities [i.e., sights glow in the dark]. A tactical flashlight was affixed to Officer Kasfeldt's rifle but it was not illuminated nor was it necessary due to the lighting around the outside of the apartment complex.

⁷Officer Kasfeldt stated that he has had specialized training in the use of the AR15 rifle in an operations and qualifications school through the San Luis Obispo County Sheriff's Department.

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After moving his patrol vehicle, Officer Kasfeldt ran from his patrol car down the road and across the courtyard where Sergeant Meyer and Officer Felarious were located.⁸ Officer Kasfeldt took a path so that he did not cross in front of Pope's apartment unit due to the fact that he knew that Pope had a rifle and that Pope "could probably hit me from there."

Upon joining Sergeant Meyer and Officer Felarious, they decided to call Pope on the telephone inside the apartment unit. Sergeant Meyer telephoned dispatch and obtained the telephone number in [REDACTED] apartment. Thereafter, Sergeant Meyer made a number of telephone calls to the apartment unit "in rapid succession." None of the telephone calls were answered.⁹ The officers then considered using a PA to attempt to call Pope out or they would try a different option. At this point Officer Kasfeldt, Officer Felarious and Sergeant Meyer were positioned behind a brick retaining wall to the side of the apartment building.

The officer discussed available options to initiate contact with Pope in order to cause him to come out of the apartment unit. They also discussed using a method of gaining Pope's attention which Officer Kasfeldt described as "SWAT rocks," a method of taking a rock or other object and throwing it from a distance at the apartment door to simulate knocking in order to force Pope to come out for the officers' safety. The officers did not want to approach the apartment unit's door so they decided to use the rock-throwing method to gain Pope's attention.

Officer Kasfeldt picked up three rocks, held them in his left hand, and held his rifle in his right hand. The officers moved up along the south outer wall/planter area of the apartment complex to the corridor area that led to the stairway that ascended to Pope's second floor apartment unit. Officer Falerious "covered down the door" in pointing his rifle in the direction of the apartment unit door. Officer Kasfeldt's rifle was "behind his back" as he proceeded to throw three rocks in succession. Each rock hit the front upstairs [Pope's] apartment unit door. Officer Kasfeldt heard each rock knock and then bounce off. Officer Kasfeldt then backed away and put his rifle "back into position" by pointing it in the direction of the apartment unit door.

⁸Each of the Atascadero officers arrived in marked police vehicles. All officers were dressed in full police uniforms.

⁹ It was later determined that the telephone line inside the apartment unit had been pulled from the wall and the telephone was not functional.

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The officers decided that Officer Kasfeldt was the "primary" officer and would be positioned at the front of the line. Officer Kasfeldt was located at the north corner of the corridor covering the stairwell as well as the door to the apartment. Officer Felarious was directly behind him covering the master bedroom window [upstairs facing the parking area]. Officer Kasfeldt was initially in a kneeling position downstairs from and diagonal to Pope's apartment unit door.¹⁰ Officer Kasfeldt was in a position to observe the stairway going up as well as the front door of Pope's apartment unit located in front of and to the right of Officer Kasfeldt's position. Sergeant Meyer was positioned behind Officer Felarious. Officer Felarious also had a rifle. Sergeant Meyer had a pistol.

After Officer Kasfeldt threw the rocks the officers remained in that position. There was complete silence for what Officer Kasfeldt perceived to be "30-45 seconds and nothing was happening." Officer Kasfeldt then "heard the dead bolt disengage on that apartment unit . . . and saw the door open." Officer Kasfeldt observed the interior of the apartment unit to be dark. He stated that the corridor outside the apartment unit was "very bright" and "there is a light located outside each apartment unit." Officer Kasfeldt further described the outside corridor's lighting to be "very bright, enough to illuminate the entire corridor." From his position Officer Kasfeldt "had total view of 95 percent of that corridor, it was very well lit, I had no need to utilize a light of any sort." Officer Kasfeldt was concerned for his safety because "there was a light that was illuminating my body." Officer Kasfeldt was dressed in a full police uniform, as described above, with the addition of wearing gloves because of the cold temperature.

When Officer Kasfeldt saw the door open inward all the way Officer Kasfeldt could immediately see the barrel and the top of the scope mounted on the rifle. Officer Kasfeldt moved from his kneeling position as the incident was progressing rapidly and was now in a standing position. Pope was initially holding the rifle in his right hand around the grip portion of the stock with his hand in a position to access the trigger. Officer Kasfeldt immediately yelled out "drop the gun" very loudly as the door opened all the way. Officer Kasfeldt immediately recognized the individual who was holding the rifle as being Richard Pope from the photographs he had seen at briefing. Officer Kasfeldt and Pope made eye contact with each other. As Pope stepped out, Officer Kasfeldt stated that his "survival instinct kicked in and . . . thought about retreating back [behind the wall] and I went, no, I can't do that, went forward . . . , decided I have to engage him if this is what it comes down to."

¹⁰Officer Kasfeldt's position was estimated by Sheriff's Department Forensic personnel to be approximately 20-30 feet from the front door of the apartment unit door.

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As Pope stepped out of the apartment Officer Kasfeldt saw the full rifle. He saw that "it was a high caliber with a very large scope" with the "dust covers flipped up on both sides." The rifle appeared to Officer Kasfeldt to be consistent with the rifle described by [REDACTED]. Officer Kasfeldt did not see Pope manipulate the bolt on the rifle in any manner. Officer Kasfeldt could see the rifle's bolt action mechanism and that the bolt was "closed and forward." Officer Kasfeldt again very loudly told Pope to "drop the gun." Pope continued to step out and took a "shooting stance." Pope began to raise the rifle in a sweeping motion by placing his [Pope's] left hand in the foregrip position. During this sweeping motion at first Pope pointed the barrel at the wall of the apartment across from Pope then "pointing the barrel" "coming down" pointed it toward Officer Kasfeldt.

Pope continued to bring the rifle up to a shooting position and pointed the rifle directly at Officer Kasfeldt. Officer Kasfeldt remained in a standing position. Officer Kasfeldt estimated that 90 percent of his [Officer Kasfeldt's] body was exposed to Pope. Officer Kasfeldt stood in a shooting position with his [Officer Kasfeldt's] rifle pointing at Pope. Officer Kasfeldt stated that his [bullet resistant] vest was in front of his [Officer Kasfeldt's] body in the event that Pope shot the rifle at him that the vest would take the force of the bullet.^{11 12}

Officer Kasfeldt yelled at Pope another time. "I was nearly pleading at that point" for Pope to "drop the f - - - ing gun." Pope continued to "bring it out, the barrel was pointed directly at me." Officer Kasfeldt stated that he "was in fear for my life, without a doubt, as well as the lives of the officers behind me and everyone around." Officer Kasfeldt stated that he [Officer Kasfeldt] "was directly under a light and he [Pope] can see me plain as day." Officer Kasfeldt had his rifle aimed at Pope as Pope made eye contact with him. He [Pope] "could see probably one of my eyes, I'm - I'm aimed down the sights." Officer Kasfeldt knew that a .308 caliber rifle, which was "what it looked like to me "when fired" would go through that wall [referring to the apartment complex wall], my vest, out the other side and in the engine block of the car behind me. Depending on how fast he [Pope] was with a bolt action rifle, he could take out all of us."

¹¹ Based on Officer Kasfeldt's description of the uniform he was wearing his bullet resistant vest was worn under his dark blue uniform shirt which bore his badge, name plate, and shoulder patches. Officer Kasfeldt later described that the rifle which Pope possessed was capable of killing him and shooting through the walls of the apartment behind which the other officers were located.

¹²Senior District Attorney Investigator Chuck Denchfield, District Attorney Rangemaster and Amorer, opined that the .308 rifle cartridge is widely used by Law Enforcement and Military forces in sniper applications. The cartridge is known for its high ballistic performance, long range capability and accuracy. The bullet could easily penetrate the walls of a wood framed residence at the distances involved.

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Officer Kasfeldt stated that "after I told him, for the last time to drop the fucking gun, he continued to raise the gun up. He set the front end foregrip [of the rifle] in his other hand [left hand] and was bringing the rifle up to a shooting position, pointed directly at me . . . and at that time, because of my fear, I fired." Officer Kasfeldt fired his rifle at Pope as Pope "continues to bring it up and before it is completely on his shoulder, I fire . . . I remember firing at least three times, rapidly, at that time, he - he dropped . . . He fell straight back on his back."

Officer Kasfeldt stated that Pope fell back into the apartment and was lying flat on his back. Officer Kasfeldt could see the "bottoms of his feet sticking out as well as the barrel of the rifle . . . pointed directly at the door across from his apartment and it was across his legs." The "rear part of the rifle and trigger looked to me like it was sitting in his lap where he could still have some control over it . . . I continued to tell him very loudly, 'show me your hands, show me your hands, drop the fucking gun, show me your hands'." Officer Kasfeldt continued pointing his rifle at Pope.

Officer Kasfeldt began to advance forward when Officer Felarious told him to "stand back, you cover down, take the low part, we'll go up." Officer Kasfeldt moved into the outside corridor with his rifle still pointed at Pope and covered as Officer Felarious and Sergeant Meyer moved up the staircase. Officer Kasfeldt did not hear anything from Pope and continued to tell Pope to "show me your hands" as the other officers moved up. Officer Kasfeldt lowered his rifle and continued to watch. Officer Kasfeldt never went up the steps.

At that time one of the Sheriff's deputies came around the corner and sat Officer Kasfeldt down on the brick retaining wall in front of the apartment. Officer Felarious approached Officer Kasfeldt and took and secured Officer Kasfeldt's rifle.

Officer Kasfeldt believed that Sergeant Meyer called for Medics immediately after the shots were fired.

3. Interviews with and reports by other involved officers:

Sergeant Greg Meyer:

Sergeant Meyer was interviewed by District Attorney Investigators Dan Bresnahan and Chuck Denchfield. He also prepared a report regarding the incident. Sergeant Meyer stated:

He began his shift on November 18, 2006, at 7:00 p.m. He was dressed in a full dark blue police uniform which included a badge, name plate, shoulder patches,

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sergeant stripes, duty belt, weapon, and radio. He was wearing the same uniform at the time of the incident.

He began his shift with a briefing from the previous shift, which included extensive information regarding Richard D. Pope and an incident that had occurred at the Bordeaux Apartments. Officer Pauls briefed Sergeant Meyer, as well as the other officers beginning their shift, that he had taken a domestic violence report regarding Pope's commission of an act of domestic violence against Pope's girlfriend on November 17, 2006 and that the victim was extremely fearful of Pope. Officer Pauls advised the officers about the domestic violence report made by [REDACTED], and the .308 rifle and ammunition which were determined to be missing from the apartment and believed to be in Pope's possession. Officer Pauls also briefed the officers about a note that Pope left in the apartment threatening [REDACTED]. The note read "I put everything into you, you are now a mark, the mission will be completed, you told me you were going for a drive and you would be back?" Officer Pauls also said that Pope had recently been released from parole and had served time in prison for crimes of violence. Pope's whereabouts were unknown and he was believed to be in his blue Jeep. Sergeant Meyer was told that Pope was a former police officer with a history of violence and criminal conduct, and that a be on the lookout (BOL) was put out as a cautionary warning to other officers and also as a request that Pope be arrested if located.¹³ He stated that the other officers on his shift were fully briefed and asked that they make periodic checks of the Bordeaux Apartments to see if Pope's vehicle returned.

At approximately 8:45 p.m. on November 18, 2006, Officer Kasfeldt, who worked the same shift, spoke with Sergeant Meyer on his cell phone. Officer Kasfeldt told Sergeant Meyer that he had spoken to [REDACTED] who told Officer Kasfeldt that Pope had used her credit card in Morro Bay on that same date. Officer Kasfeldt related that [REDACTED] also told Officer Kasfeldt that Pope had told her in the past that he wanted to kill himself and would do so by driving off the breakwater in Morro Bay. Officer Kasfeldt

¹³ In addition, at the briefing the officer had a copy of Pope's local criminal history (LS 30 person contact/county justice information). This criminal history included, in relevant part: three separate entries for Penal Code § 273.5, spousal abuse (9/17/93, 8/13/96, 12/24/01); Penal Code § 422, criminal threats (1/20/98); Penal Code § 12021(A), felon in possession of firearm (1/21/98); Penal Code § 242, battery (3/21/95 and 10/20/95); Penal Code § 12025(a), possession of a concealed firearm on a person (1/4/90); Fish & Game Code section 2006, possession of a loaded rifle or shotgun in a vehicle (2/10/94). This document also showed two separate prison sentences for criminal convictions (1/19/98 and 12/22/01). The officers also had a California Law Enforcement Teletype System (CLETS) which showed that Pope historically had purchased four handguns. An additional CLETS document showed Pope's discharge from parole on 8/8/06 and stated that he was an ex-police officer.

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told Sergeant Meyer that he would call Morro Bay Police Department and relay that information.

Sergeant Meyer then drove to the area of Pope's apartment to look for Pope's vehicle which he observed parked at the apartment complex. Sergeant Meyer called dispatch, awaited Officer Kasfeldt's arrival, and requested the telephone number for Pope's apartment. Sergeant Meyer parked his patrol car out of view from apartment F, Pope's apartment. When Officer Kasfeldt arrived he told Sergeant Meyer that Pope was in the apartment based on information [REDACTED] had received from her neighbor in apartment E, which information was relayed to Officer Kasfeldt. Sergeant Meyer stated that it was his understanding that Pope was armed with a high power rifle, that he [Pope] possibly knew the whereabouts of [REDACTED] and that Pope had expressed an intent to harm her. Sergeant Meyer formed the opinion that he could not leave without determining if Pope was in the apartment.

Sergeant Meyer called police dispatch for dispatch to call the Sheriff's office for mutual aid in order to establish a perimeter around the building. At approximately 9:45 p.m. two Sheriff's Department patrol cars arrived each with two deputies. Upon their arrival the deputies were briefed by Sergeant Meyer regarding Pope being possibly armed with a high powered rifle as well as Pope's prior experience with weapons. Sergeant Meyer then assigned the deputies to areas around the building. Sergeant Meyer then met with Officers Kasfeldt and Falerious to establish a "contact team." Sergeant Meyer then had Officer Kasfeldt drive his patrol vehicle into a position to block Pope's vehicle. Sergeant Meyer then telephoned Pope's apartment and let the telephone ring approximately 20 times with no answer. Sergeant Meyer re-contacted dispatch to reconfirm Pope's telephone number. He called the number again with the same result. At that time, Sergeant Meyer and Officers Kasfeldt and Falerious moved to the front of the apartment building. Upon doing so a resident of apartment E, located directly below Pope's apartment, came out of her apartment and told Sergeant Meyer that she had called [REDACTED] earlier and could hear Pope or someone moving around in the upstairs apartment. Sergeant Meyer then told her to go back into her apartment.

While located near the base of the stairs that led to Pope's apartment, Sergeant Meyer instructed Officer Kasfeldt to throw approximately four rocks at the door of apartment F, Pope's apartment in an attempt to gain Pope's attention. Officer Meyer did not want to expose an officer to the possibility that Pope would shoot through the door of the apartment with the .308 caliber rifle. Sergeant Meyer hoped that the tactic would cause Pope to open the door and would allow an opportunity for dialog that might lead to his surrender and a safe opportunity to arrest him.

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Thereafter, Officer Kasfeldt got into a kneeling/squatting position and pointed his department assigned AR 15 rifle at the front door of Pope's apartment. Sergeant Meyer directed Falerious to cover the front bedroom window of the apartment with his AR 15 rifle.

Approximately 30 seconds after Officer Kasfeldt had thrown the last rock, Sergeant Meyer called Pope's telephone number again. As the phone rang Sergeant Meyer heard Officer Kasfeldt begin to yell commands at a person who Officer Kasfeldt could see on the landing in front of apartment F [from his position around the corner of the outside corridor Sergeant Meyer could not see the person who was in on the landing]. Sergeant Meyer stated that even though Officer Kasfeldt was "using the corner for cover he was at least 50% exposed to the corridor and landing area and therefore to Pope's view. Sergeant Meyer heard Officer Kasfeldt yell orders three times to someone around the corner to "drop the gun." Sergeant Meyer then heard Officer Kasfeldt fire his AR 15 approximately three to five times. Officer Kasfeldt then yelled that the individual was down. Officer Falerious was standing between Officer Kasfeldt and Sergeant Meyer also around the corner of the outside corridor. Sergeant Meyer and Officer Falerious then moved from around the corner into the outside corridor and aimed their weapons up toward apartment F. Sergeant Meyer could see a right foot and the barrel of a rifle aimed toward the base of the stairs. Sergeant Meyer yelled "Richard can you hear me" and then called paramedics to respond to the location.

Sergeant Meyer then told Officer Kasfeldt to step back while he [Sergeant Meyer] and Officer Falerious went upstairs and observed Pope. The rifle was taken from Pope and was secured. Firefighters responded and administered first aid to Pope. Pope was then transported by ambulance to Twin Cities Hospital.¹⁴ Sergeant Meyer was later informed that the rifle that Pope was holding when he was shot was a .308 caliber with a fully loaded clip inserted. There was a bullet in the chamber and the rifle's safety was in the "on" position. A scope mounted on the rifle had the lens dust covers in an "up" or open position.

Officer Keith Falerious:

¹⁴ Pope was given CPR for 20 to 30 minutes according to the Emergency Room Physician, Dr. Robinson. Due to the nature of the injuries Dr. Robinson opined that there was not a lot of medical intervention available. Dr. Robinson determined that continued resuscitation efforts would be futile and pronounced Pope's death on November 18, 2006 at approximately 10:56 p.m.

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Officer Falerious was interviewed by District Attorney Assistant Chief Investigator Kim Berlin and Senior District Attorney Investigator Dan Bresnahan. He also prepared a report regarding this incident.

Officer Keith Falerious stated:

Officer Falerious was present during the shift briefing regarding Pope. Officer Falerious was familiar with Pope from prior contacts with Pope when he [Officer Falerious] worked for the Morro Bay Police Department. Officer Falerious shared his knowledge with the other officers. This included information that Pope had been a police officer and that he had received SWAT training, had a history of domestic violence, and that he had contacts with Pope for drug use and alcohol abuse. Officer Falerious was present at the briefing regarding Pope's domestic violence, false imprisonment of Pope's girlfriend and threats Pope had made towards her. He was told that Pope was in possession of a .308 rifle with a scope and that Pope was driving a blue Jeep with personalized license plates.

He assisted Sergeant Meyer and Officer Kasfeldt during the incident involving Pope in the evening hours of November 18, 2006. The officers stood in an area to the front of apartment F, Pope's apartment. Officer Kasfeldt was the only one of the three of them who had a view of Pope's apartment door. He recalled hearing Officer Kasfeldt shout at least once but may have shouted two to three times for Pope to "drop the gun." Officer Falerious moved closer to Officer Kasfeldt so he could see around the corner. Upon doing so Officer Falerious observed that Officer Kasfeldt was yelling at Pope. Officer Falerious saw Pope standing on the second floor landing approximately half-way out of his apartment door with one foot in the apartment unit door and the other foot on the landing. Pope was wearing a shirt and shorts. Pope was facing and was looking at Officer Kasfeldt. Pope was holding a rifle with a scope and was holding the rifle with both hands and was pointing the rifle directly at Officer Kasfeldt. He described the rifle as being three quarters of the way to Pope's shoulder and at an angle pointing down from the landing where Pope stood. Officer Falerious "felt that Officer Kasfeldt was in imminent danger and about to be shot by Pope" as well as feared for his own safety.

Officer Falerious moved backward to gain better cover and reached to pull Officer Kasfeldt behind cover as Officer Falerious "feared we were in danger." Officer Kasfeldt fired "several rounds" from his rifle prior to Officer Falerious attempting to grab Officer Kasfeldt.

4. Reports by on-scene Deputy Sheriffs

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Two two-man patrol cars were dispatched on November 18, 2006, at approximately 9:20 p.m. to assist the Atascadero Police Officers. Upon their arrival the deputies were briefed by Sergeant Meyer. Sergeant Meyer informed the deputies that they would assist in setting up a perimeter. The plan was to attempt contact with Pope and to request him to come out and surrender. Failing that, they would begin evacuating neighbors and call for SED while maintaining a perimeter.

Two deputies were assigned to the rear of the building to cover any possible escape routes. Two deputies were positioned in the front of the building further down Bocina Lane. The Atascadero Officers advised the deputies that they were going to attempt to make contact with Pope at approximately 10:00 p.m.

At that time, the deputies located in the rear of the building could hear yelling but it was indiscernible followed by an estimate of three to four gun shots.

The two deputies in the front of the building were located at the southwest corner of 9377 Bocina Lane in the parking lot behind the dumpster. At approximately 10:05 p.m., one deputy described seeing Sergeant Meyer and Officers Falerious and Kasfeldt make their way to the area near the bottom of the stairway leading to apartment F. The deputy saw Officer Kasfeldt throw several rocks up the stairs toward the front door of apartment F. After a few moments the deputy heard someone yell commands to "drop the weapon" or "drop it," three times. One deputy described hearing "several sharp reports" that sounded like gunfire. The other deputy described hearing what "sounded like four rapid fire gunshots" followed by more yelling from one of the three Atascadero Police officers.

5. Independent Witness information regarding the shooting incident

A number of individuals who were present at and near the shooting incident were contacted and were interviewed. A number of individuals heard or saw some or part of the incident.

A number of residents of the apartment building were located in their respective apartment units. Some reported hearing nothing. Some heard loud "shouting," or "yelling," or commands to "put the gun down." Some reported hearing the command once; some reported hearing the command three times. There were varying estimates of hearing gunshots estimated to be from two to six gunshots in rapid or quick succession. One person describes hearing "one shot then four really quick shots."

No civilian witness was in a position to observe Pope either walking out of the apartment unit or standing on the stairway landing. At least three civilian witnesses who

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were outside the apartment building saw actions of the officers. One witness observed that "four officers walked towards the apartment" where the incident occurred and saw "the officers throwing rocks or something at the door." She then heard yelling and then five shots in quick succession.

Another witness could see the bottom of the stairway leading upstairs, but could not see the individual upstairs. The witness saw "the officers" approach the bottom of the stairway, heard an officer yell "drop the gun," and heard three shots.

Another witness had a camera and tried to get close to where the officers were located. He described seeing three Atascadero Police Officers approach the stairway leading to Apartment F. He saw one officer appear to throw something upstairs. A short time later, he heard the officer yell, "put the gun down," three times. There was a pause, which the witness estimated to be fifteen seconds followed by four or five gunshots "fired by the officer carrying the rifle."¹⁵

B.

ADDITIONAL RELEVANT INFORMATION REGARDING THE SHOOTING INCIDENT

1. Shooting scene investigation/officer's rifle

After the shooting incident, five cartridge casings were observed by on-scene officers and were collected by on-scene officers. The shell casings were consistent with the AR-15 Rifle that was fired by Officer Kasfeldt. The cartridge casings were submitted to the Department of Justice Laboratory for examination and comparison with bullets removed from Pope's body.

Officer Kasfeldt's rifle and magazine was examined by the Atascadero Police Department armorer as well as a single live .223 caliber round that had been removed from the chamber of the rifle. The magazine contained twelve live department-issued rounds of .223 caliber. The magazine was clean, serviceable and in good condition. Including the five spent bullets, the magazine had been loaded with a total of eighteen live rounds.

¹⁵This witness proffered photographs that he took near the time the time of the shooting incident. The photographs depict the general outside lighting conditions as well as the locations of the officers.

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The rifle was tested for function. The safety and fire control were functioning properly with no unauthorized modifications or replacement parts. The trigger pull test was six pounds, nine ounces or compound with an annual inspection report on this rifle conducted on June 5, 2006. The previous inspection report showed the trigger pull to be seven pounds, one ounce with no deficiencies.

2. State of California Department of Justice Physical Examination Report/Shooting Scene

Senior Criminalist George Levine reported to the shooting scene in the early morning hours of November 19, 2006. He was briefed regarding the circumstances of the shooting incident. Upon examining the outside stairway, upstairs landing, and areas adjacent to the front door of Pope's apartment, including the presence of blood spatter and tissue fragments indicating direction of travel, Mr. Levine opined, based upon his interpretation of the blood spatter analysis that Pope was in fact positioned outside of the apartment unit and at the top of the stairs at the time he was shot.

3. State of California Department of Justice Report/Firearms Examination

Senior Criminalist Dave Barber was provided the M16 rifle used by Officer Kasfeldt during the shooting incident as well as the rifle Pope was holding and pointing when he was shot.

Mr. Barber determined that Officer Kasfeldt's rifle was functional in all aspects and noted that it was modified to fire only in a semi-automatic mode. He examined the five shell casings recovered from the incident scene and determined them all to be .223 caliber, Winchester brand, and all were of similar appearance. He also examined the bullets recovered from Pope's body and determined them to be similar in design and caliber and consistent with coming from the shell casings found at the scene.

Mr. Barber examined the rifle held by Pope, a Browning bolt action .308 caliber rifle fitted with an optical scope. The rifle was determined to be fully functional. Mr. Barber test fired the rifle and determined it was fully capable of firing live ammunition.

4. Autopsy Report

An autopsy was performed on Mr. Pope by Dr. Gary Walter on November 19, 2006. During the autopsy five (5) bullets were recovered from Mr. Pope's body. The cause of death was determined to be "exsanguination (minutes) due to, or as a consequence of

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multiple penetrating gunshot wounds (minutes)." Blood and vitreous humor samples were taken for toxicology.¹⁶

Senior District Attorney Investigator Dan Bresnahan was present during the autopsy. Investigator Bresnahan was familiar with the facts of the shooting incident including the relative positions of the shooting officer and Pope. Upon discussing these factors with Dr. Walter, Dr. Walter opined that the gunshot injuries sustained by Pope were consistent with the observations of the officers involved. Injuries to Pope's left arm were consistent with Pope's left arm being raised while holding a rifle, including the bullet wounds to the underside of the left arm and penetrating the body in the area of the left side chest.

C.
ADDITIONAL RELEVANT BACKGROUND INFORMATION

1. Information regarding Pope's recent mental state

Co-workers of Pope were contacted and were interviewed by District Attorney investigators. One co-worker described that he was "fearful of a violent confrontation" between Pope and [REDACTED], with whom Pope worked.

This individual described Pope as a "great guy" and a "very skilled welder." He described that Pope "seemed to be in a good mood lately," but he knew that "there was something going" in that he suspected that [REDACTED] and her husband might have been attempting to reconcile. He stated that Pope had not been at work the previous week and he suspected that it had to do with his relationship with [REDACTED]. He had not seen Pope engage in substance abuse but "he had heard that Pope 'turned ugly' when he had been drinking."

[REDACTED] was identified as Pope's best friend, has known Pope for many years, and the person who knew the most about him and his proclivities. Their

¹⁶ Blood samples that were taken from Pope's body at the time of the autopsy for blood alcohol analysis were analyzed by Central Valley Toxicology Lab (CVT). CVT determined that Pope's blood ethyl alcohol was .35%. [For reference, this amount is over four times the legal limit with regard to driving under the influence]. Further, source material from the National Highway Traffic Safety Administration shows that a person with the body weight of 220 pounds [Pope's weight per driver's license information] would have ingested approximately 20 ounces of 100 proof liquor or approximately 20 beers. It is unknown when Pope began consuming alcohol on that date. Thus, a more accurate evaluation is not possible. No drugs were detected.

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friendship suffered when Pope began a relationship with [REDACTED] wife, but maintained a working relationship at their mutual employment. He described Pope as "drinking a lot and drinking often," would "over indulge," and was often "over the edge" when he was drinking. [REDACTED] also described Pope as being violent when he drank. He related that Pope seemed to have problems with alcohol and with women. He described Pope's "personality definitely changed in a bad way when he consumed alcohol." [REDACTED] described Pope as likely to sit in front of his television and drink a case of beer as opposed to going to bars to drink.

2. Information regarding Pope's prior police employment

Subsequent to the shooting incident, [REDACTED] Westminster Police Department, was contacted and related that he and Pope graduated from the police academy in 1984. Pope was ranked second in his academy class. Pope was hired by Westminster Police Department and was immediately assigned to a narcotics unit. After about a year, Pope was "experiencing problems," was drinking, missed work, and was having marital problems.

In 1987 Pope was at his home and fired his gun into the mirror of his dresser. [REDACTED] described Pope as being "unstable." A BOL to area police agencies was subsequently broadcast which described Pope as possibly suicidal. An incident occurred when the Los Alamitos Police Department made a "high risk" traffic stop on Pope's personal vehicle. During the traffic stop Pope was out of his car when he made "multiple attempts" of simulating reaching for a gun in his jacket and waistband in what Coopman believed was an attempt at "suicide by cop." However, the involved officers did not shoot and Pope was taken into custody. In mid 1987 Pope left the employment of the Westminster Police Department on what [REDACTED] termed a "forced voluntary resignation."

3. Recent instance regarding Pope's aggressive conduct toward Law Enforcement

The Los Alamitos Police Department was conducting an arson, burglary, and domestic violence case [No. 05-1225] involving Pope which resulted in his arrest.

On August 1, 2005, officers were dispatched to a residential fire in a condominium in Los Alamitos, California. The female resident of that location was having a relationship with Pope. The female reported that on July 30, 2005, Pope had gotten into a verbal altercation with her and that she was afraid of Pope because of his demeanor and that he was an alcoholic. The female reported that Pope had hit the

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walls in the apartment which made visible holes observed by the officers. Pope had also forced her to sit on a couch for a period of time. Pope held her down by her shoulders. He then took her upstairs and forced her to sit in a chair as he placed his hands around her neck and used his thumbs to place pressure on her trachea. Pope then allowed her to leave the residence with her daughters and said he did not want to hurt her.

On July 31, 2005, the female victim contacted Pope and told him that he could not come around her residence and that he needed to get help for his drinking problems. Pope then told the female victim "you're a dead woman . . . you're dead to me."¹⁷

On August 1, 2005, at 8:08 p.m. while officers were present at the fire scene, Pope arrived driving a pick-up truck. Pope appeared to be intoxicated. When officers made contact with Pope he became agitated and unresponsive to many questions. Pope talked with slurred speech. As Pope began to walk away an officer told him to stop because the officer needed to search him to make sure he did not have weapons. The officer asked Pope how much he had to drink to which Pope replied "a whole lot." The officer told Pope that he could not drive his vehicle away. [The officer knew that Pope was on parole and was using the search as an excuse to take him into custody pursuant to Pope's parole agent's request.] Pope continued to walk away. The officer told Pope that he [Pope] was on parole and he was required to submit to a search. The officer tried to calm Pope down unsuccessfully. The officers were aware that Pope had been a police officer and had been the member of a SWAT team. Pope was described as being 6' tall, 220 pounds, and extremely muscular. Pope began pacing back and forth while pumping both fists and becoming visibly agitated, started to hyperventilate, and clenching his fists. At one point Pope put one of his keys between his fingers as if to use it as a weapon. It appeared that Pope was preparing to attack one of the officers. Consequently, one of the officers used his taser gun on Pope causing Pope to fall to the ground.

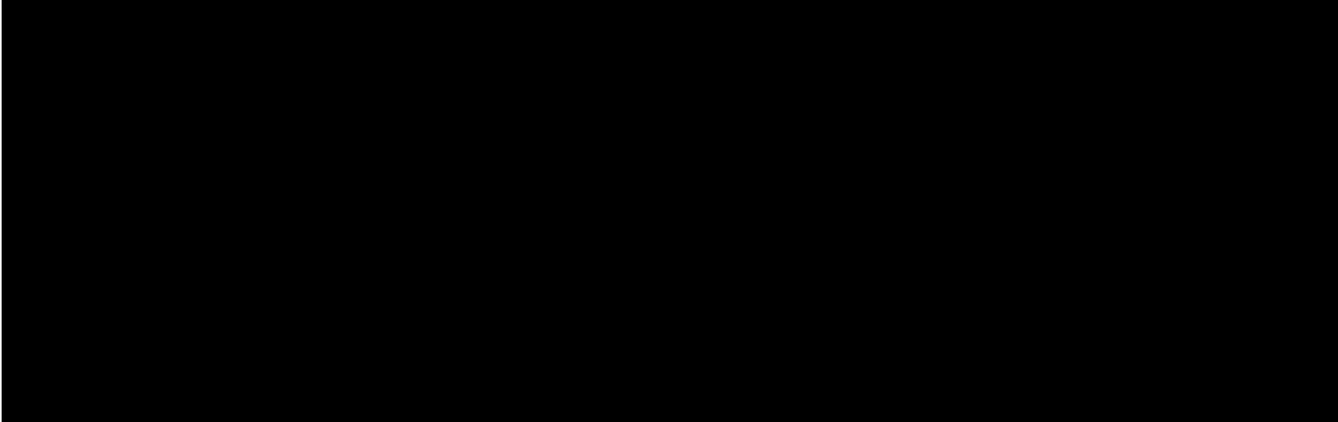
After his arrest, Pope said he was taking anabolic steroids and drank 750 ml of Jim Bean whiskey. Pope expressed a desire to harm himself if given the opportunity and did so again upon being booked.¹⁸ A restraining order was obtained on October 7, 2005 to protect the victim of the domestic violence perpetrated on her by Pope.

¹⁷ These factors are extremely similar to Pope's conduct toward █ on November 17, 2006 to the Atascadero Police Department.

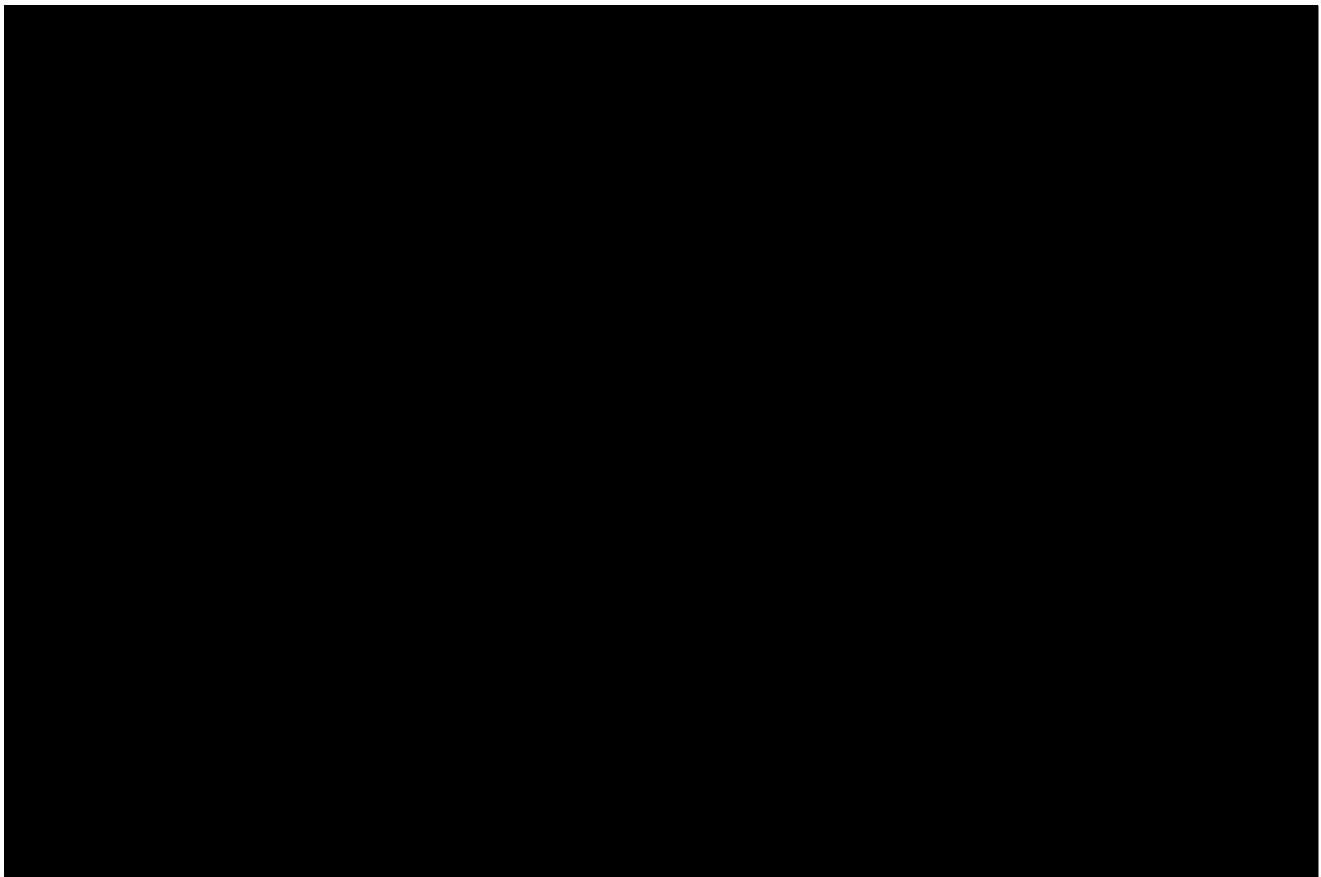
¹⁸This case was still under investigation pending DNA results regarding the arson and burglary. As of the date of Pope's death, the Orange County District Attorney's Office had not filed charges and cannot do so due to his death.

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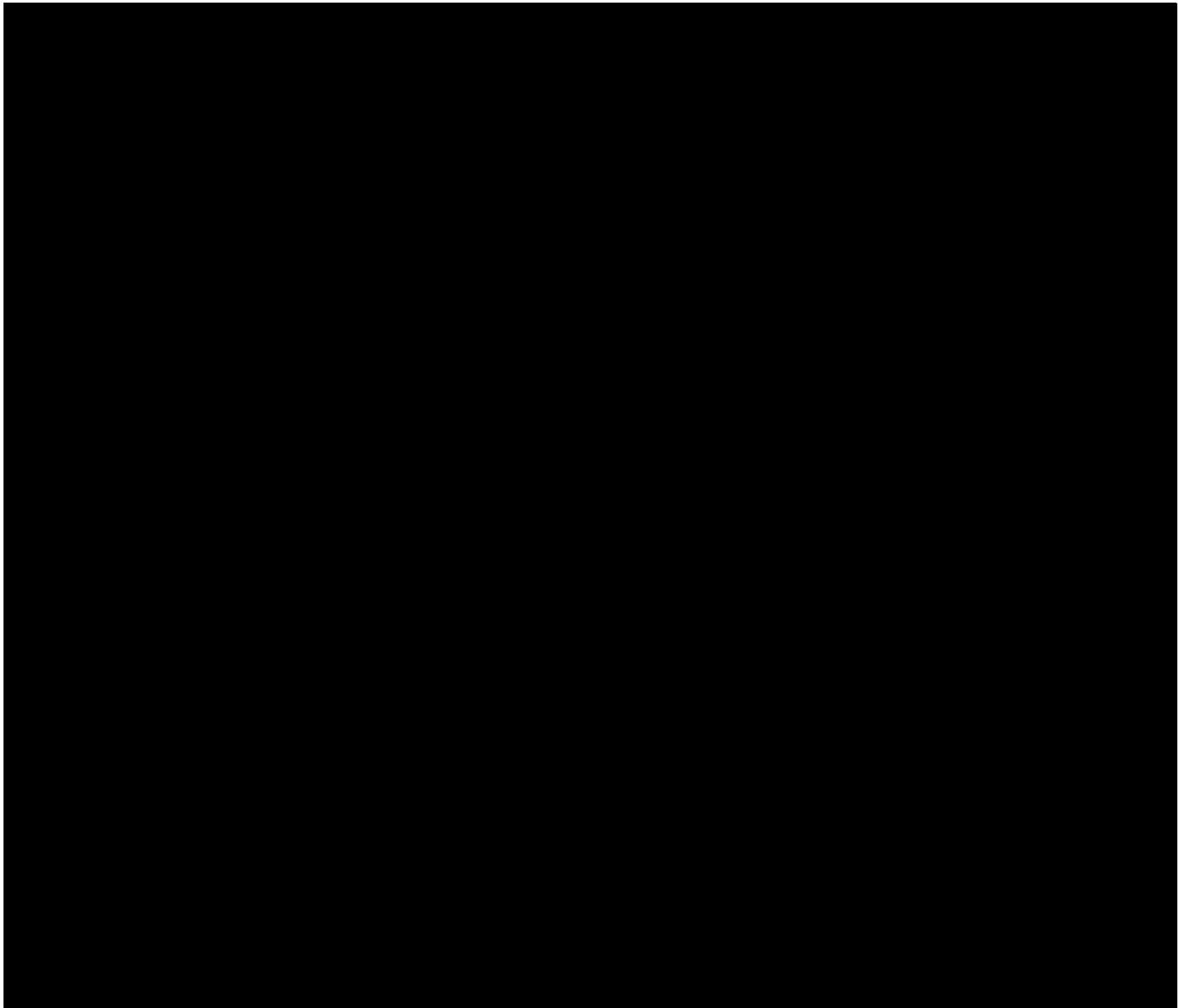
4. Information relevant to Pope's past abuse of alcohol/related conduct



5. Pope's relevant criminal history



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**II.
LEGAL ANALYSIS**

The role of the District Attorney's Office is to only investigate officer involved use of deadly force for the purpose of assessing and applying the law relating to the use of such force, and to only determine whether the officers' acts fall within the state laws of criminal responsibility. In making that determination, we are bound by the same burden of proof (proof beyond a reasonable doubt) and standard of review applicable in any other criminal case. Our findings do not consider any potential civil liability nor do we express any

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opinions regarding either police tactics or compliance with the involved officer's departmental policy. The findings made by our office in this case are both authorized and required by law. Cal. Const. Article III, Section 3; Government Code Section 26500; Hicks v. Board of Supervisors, 69 Cal.App.3d 228, 138 Cal.Rptr. 101.

The Office of the District Attorney conducted its review by applying the facts of this case to controlling legal authority. Applicable law in this case includes California statutes, as well as state and federal published cases.

In the analysis of this case, there are presented specific issues which include: 1) whether the use of deadly force by the officer was objectively reasonable; 2) whether the use of such force was excessive under the circumstances; and 3) if the force used was excessive, whether there is criminal liability.

In order to give meaning to Officer Kasfeldt's actions and reactions in this instance and his use of deadly force by discharging his firearm and shooting Pope, both the actions and state of mind of Pope which were known to Officer Kasfeldt prior to his arrival at the shooting location as well as after the officer's arrival must be considered.

Factors that must be considered in the analysis of this case include: the officer's response to the location with knowledge of Pope's background as a police officer specifically trained in the use of firearms as well as general police tactics; knowledge that Pope most likely was in possession of a high powered hunting rifle and ammunition; the officer's knowledge and belief of the extreme power of a .308 fired bullet; knowledge of Pope's violent criminal history, prior felony conviction and prison sentence; knowledge of Pope's immediate past violent criminal and threatening conduct towards the domestic violence victim; Inferentially, Pope's knowledge that the victim had reported his criminal conduct to the police; knowledge of Pope's potential suicidal state of mind; the fact that the responding officers were in full uniform; Pope's observation of the officer's presence upon exiting his apartment unit and his making eye contact with the officer; Pope pointing the rifle at the officer from a short distance while located above and in a superior position to the officer; Pope not heeding the officer's immediate and multiple demands for him to drop the rifle; Pope's continued refusal to heed the officer's multiple commands to drop the rifle while Pope walked out of the apartment unit onto the landing, took a shooting stance, and pointed the rifle directly at the officer; the officer's observation of Pope's present ability to fire the rifle by having the bolt mechanism in the firing position, his finger in the trigger location, and the end caps/covers of the scope in an "up" or open position; and Pope making direct eye contact with the officer while the officer stood almost fully exposed to Pope's view in an extremely well lit location and directly under a light. Pope's high level of intoxication, with a blood alcohol of .35, is also a factor to be considered in this analysis with respect to Pope's conduct.

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Only then did Officer Kasfeldt respond with the use of deadly force and only after such potentially deadly force was directly and immediately applied to him and to the other officers in his immediate presence. These events happened very quickly and took only a matter of seconds. Officer Kasfeldt's use of deadly force occurred only after he had an immediate and objectively reasonable fear of suffering great bodily injury or death to both himself and his fellow officers as well as others in the area.

A.

RELEVANT STATUTORY AUTHORITY

In making this legal analysis, in consideration of the specific facts of this case, there exists relevant statutory authority beginning with Penal Code § 836, which states, in relevant part:

“(a) A peace officer may arrest a person . . . without a warrant, . . . whenever any of the following circumstances occur:

“(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

“(2) The person arrested has committed a felony, although not in the officer's presence.

“(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed . . .”

Furthermore, Penal Code § 836(d) authorizes a peace officer to arrest without a warrant a person who assaults a co-habitant or a person with whom the suspect currently is having or has previously had a dating relationship where:

- (I) The peace officer has probable cause to believe that the person to be arrested has committed the assault and battery, whether or not it has in fact been committed;
- (ii) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

Penal Code Section 835 states:

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"An arrest is made by the actual restraint of the person or by submission to the custody of the officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention."

Penal Code § 835a allows a peace officer to use reasonable force in making an arrest. Penal Code § 835a states:

"Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or overcome resistance."

"A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

Statutory law prohibits an individual from resisting arrest. Penal Code § 834a states:

"If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest."

In addition to the above, Penal Code Section 196, entitled "justifiable homicide; public officers," states in relevant part:

"Homicide is justifiable when committed by public officers, either—

"2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

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"3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest."¹⁹

Parenthetically, in this case, the officers also had an Emergency Protective Order [EPO] which had been issued by a San Luis Obispo Superior Court Commissioner. This EPO resulted from Pope's criminal conduct on the previous day involving his co-inhabitant, the victim of a reported act of domestic violence. Penal Code § 646.91(h)(1) and Family Code § 6271, each in the same mandatory language, state:

"A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person if the restrained person can reasonably be located;

...

With respect to Pope's criminal conduct towards the responding officers, Penal Code § 245(d)(1) states that any person who commits an assault with a firearm on a peace officer in the performance of his/her duties is guilty of a felony offense. This crime is defined by the Penal Code as both a "serious felony" [P.C. § 1192.7(11)] as well as a "violent" felony [P.C. § 667©(8)]. Based on the facts, Pope was certainly committing such a violent crime directed at Officer Kasfeldt. Under the circumstances presented to Officer Kasfeldt, he had reasonable cause to believe that Pope was also committing the more aggravated crime of attempted murder on a police officer, also defined as both a "serious" and a "violent" offense. P.C. § 1192.7(9), (11), (31); and P.C. § 667.5(a)(12).²⁰

¹⁹ Criminal Jury Instructions, [CalCrim], Fall 2006 edition, is instructive on the application of Penal Code Section 196. CalCrim instruction 507 states that a peace officer is not guilty of a homicide and the killing is justified when the killing occurred where the officer had probable cause to believe that the person posed a threat of serious physical harm to the officer or to others or is going to cause physical harm to another and that the person was committing or had committed a forcible and atrocious crime. The Bench Notes following this instruction cite Tennessee v. Garner, 471 US 1, 105 S.Ct. 1694 and Long Beach Police Officers Association v. City of Long Beach (1976) 61 Cal.App.3d 364; 131, cited and discussed infra, as authority for this instruction.

²⁰ It was determined by the crime scene investigators after the shooting incident that Pope's rifle, a bolt action, .308 caliber, had a bullet in the chamber, had the safety "on," but was otherwise ready to fire, and had bullets in the magazine. The rifle also had a scope mounted on the rifle with coverings in an "up" position allowing Pope to readily use the scope to aim the rifle. For the purpose of analysis of the actions and reactions of Officer Kasfeldt in the reasonable application of deadly

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B. Relevant Case Law Analysis

California Appellate Court cases have interpreted the above statutory authority with reference to use of force by police officers, including the objectively reasonable use of deadly force in the apprehension of suspects. In a challenge to a police department's policy authorizing the use of deadly force to apprehend felony suspects, the Appellate Court upheld such a policy. In Kortum v. Alkire, 69 Cal.App.3d 325, 138 Cal.Rptr. 26, citing Penal Code Sections 835a (use of reasonable force to make an arrest) and 196 (justifiable homicide), the court held that deadly force may be used by a peace officer in the apprehension of a suspect engaged in a "violent felony." See also Martinez v. County of Los Angeles, 47 Cal.App.4th 334, 54 Cal.Rptr. 772; Edson v. City of Anaheim, 63 Cal.App.4th 1269, 74 Cal.Rptr. 614; Munoz v. City of Union City, 120 Cal.App.4th 1077, 2004 Cal.App. Lexis 1187; Long Beach Police Officers Association v. City of Long Beach, 61 Cal.App.3d 364, 132 Cal.Rptr. 348.

Discussing Penal Code Section 835a, the Edson court held, at p. 1272, that a ". . . police officer in California may use reasonable force to make an arrest, prevent escape, or overcome resistance, and need not desist in the face of resistance"

Further, the Edson court also held:

"Equally important, a police officer must have control over the manner and means of making an arrest or detention. The interests of the commonwealth happily coincide here with sound logic. Both dictate that '[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.' (Graham v. Connor, supra, 490 U.S. at pp. 396-397 [109 S.Ct. at p. 1872].) Placing the burden of proof on the plaintiff [in a civil lawsuit context] gives the police appropriate maneuvering room in which to make such judgments free from the need to justify every action in a court of law."

force, it is relevant only to rely upon the factors which were presented to him. That is, Officer Kasfeldt had reasonable cause to believe that the above crimes were in fact being committed by Pope and were directed at him. Hence, the personal safety and life of that officer and his fellow officers were immediately endangered, whether or not the officer had specific knowledge that the rifle was either loaded or was operable. See People v. Rodriguez, 20 Cal.4th 1; 82 CR 2nd 413. A discussion of additional cases is found infra, wherein individuals pointed firearms at police officers resulting in the officers' objectively reasonable use of deadly force in those cases.

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"It makes sense to 'surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. . . .' (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 344 [54 Cal.Rptr.2d 772], quoting from Roy v. Inhabitants of City of Lewiston (1st Cir. 1994) 42 F.3d 691, 695). We share the view of the Missouri courts that 'the officer in the first instance is the judge of the manner and means to be taken in making an arrest unless a plaintiff can show that unnecessary force was used, courts will protect the officer.' (Neal v. Helbling, *supra*, 726 S.W.2d at p. 487). . . ."

In addition to the above California case authority, there are numerous Federal cases, including United States Supreme Court cases, which are likewise instructive.²¹ These cases deal with the issue of whether the use of deadly force by police officers was reasonable within the meaning of the Fourth Amendment to the United States Constitution.

Two landmark United States Supreme Court cases that discuss the use of deadly force by a police officer are Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694 (1985) and Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865 (1989). These cases enunciated principles for the use of such force which principles are discussed and applied in factual scenarios in subsequent cases. In Graham v. Connor, *supra*, the Supreme Court discussed the "objective reasonable test," and held at pp. 791-792:

" . . . The reasonableness of an officer's particular use of force 'must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . .'"

The Supreme Court in Garner, *supra*, further held at p. 396, that:

" . . . 'reasonableness' meant the 'standard of reasonableness at the moment,' and that 'the calculus of reasonableness must embody allowance for the fact that public officers are often forced to make split-second judgments - - in circumstances that are tense, uncertain,

²¹ Federal cases cited herein are primarily civil rights lawsuits pursuant to 42 U.S.C. 1983 or other similar causes of action wherein police officers or their employers are sued as a result of using deadly force. These cases involve a much lower standard of proof [preponderance of evidence] than is required in a criminal prosecution [proof beyond a reasonable doubt]. Many of these cases involve issues of qualified immunity or summary judgments, the latter of which have even a lower civil standard [whether there is an issue present for a jury's determination]. Such cases are therefore helpful in the ultimate analysis of a potential criminal case.

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and rapidly evolving -- about the amount of force that is necessary in a particular situation. . . . "

In Sherrod v. Berry, 856 F.2d 802 (7th Cir. 1988), police officers approached a car after a robbery had occurred and thought the suspects were "probably armed." The officers ordered the suspects to raise their hands three times before the suspects complied. This recalcitrance on the part of the suspects further aroused the officers' suspicion as to the imminent danger confronting them. An officer's gun was pointed at the occupants of the car and, as he approached the car, he observed the driver make a "quick movement with his hand into his coat . . . [as if] he was going to reach for a weapon." The officer shot the suspect, killing him.

Sherrod, supra, cited Tennessee v. Garner, supra, and Ford v. Childers, 855 F.2d 1271 (7th Cir. 1988). In Garner, " . . . the court stressed the rule that it is reasonable to use deadly force if the officer, when exercising his or her reason or judgment, has probable cause to believe that the suspect poses a threat of death or serious physical harm to the officer or others and, whenever possible, warns the suspect before firing . . ." Id. at 11-12.

Under the facts of Sherrod, supra, at p. 805, the court held: "When an officer believes a suspect's actions places him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force . . ." See also Davis v. Freels, 583 F. 2d 337 (7th Cir. 1978), upholding the shooting of a detained suspect who made a sudden and suspicious movement with his right elbow in a backward direction. See also Muhammed v. City of Chicago 316 F.3d 680 [7th Cir. 2002]; Baldridge v. City of Santa Rosa, 1999 U.S. Dist Lexis 1414.

In Sherrod, supra, at p. 806, discussing a police officer's use of deadly force based on information known to the officer at the time of his actions, the court held:

"It is not necessary that the danger which gave rise to the belief actually existed [whether or not the suspect was armed], it is sufficient that the person resorting to the self defense at the time involved reasonably believed in the existence of such danger, and such reasonable belief is sufficient even where it is mistaken. In forming reasonable belief, a person may act upon appearances. In other words, it is sufficient that the danger was reasonably apparent."²²

²² In a footnote in Sherrod, supra, at p. 807, the court discussed FBI statistics at the time of the shooting (1987). It discussed the fact that during an eleven year period from 1976 to 1986, law

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Based on the above in Sherrod, supra, in a civil rights action that was filed against the officer, his chief, and the city, the court discussed the "objective reasonableness" standard which measures an officer's actions "under the circumstances" presented. Lester v. City of Chicago, 830 F.2d 706 (7th Cir. 1987). "Under the circumstances" refers to those circumstances known and information available to the officer at the time of his action. Knowledge of the facts and circumstances gained after the fact (that the suspect was, in fact, unarmed) is irrelevant in the analysis of the reasonableness of the actor's judgment. *Id.*

This same rationale applies to a situation where the officer, as in the instant case, reasonably reacts to the immediate fear of being shot by an individual.

The determination of whether the force used was unlawful or unconstitutional is based upon the "information possessed" by the involved police officer, what a reasonable police officer would believe to be lawful [i.e., objective belief] under the circumstances, and based upon the information then possessed, not what the shooting officer may have believed. Anderson v. Creighton, 48 U.S. 635, 641, 107 S.Ct. 3034 (1987).

In addition to the "objectively reasonable" standard, courts have rejected the argument that an officer must use the least amount of force, as an alternative to deadly force, in a situation where the use of deadly force is reasonable. ". . . We have rejected that position and stated, 'we do not believe that the Fourth Amendment requires the use of the least or even a less deadly alternative so long as the use of deadly force is reasonable under Garner v. Tennessee and Graham v. Connor . . .' " Plabos v. Drinski, 19 F.3d 1143, 1149 (7th Cir. 1994) . . . Scott v. Edinburg, 346 F.3d 752 (7th Cir. 2003). See also Smith v. Freland, 954 F.2d 343 (6th Cir. 1992). The United States Supreme Court has held that a police officer may use such force as is "objectively reasonable" pursuant to the Fourth Amendment of the United States Constitution, including the use of deadly force. Graham v. Connor, supra, Tennessee v. Garner, supra.²³

enforcement officers killed by gunshot were most often within 10 feet of their assailants at the time of the fatal encounter. It noted that FBI statistics further establish that patrol officers on investigative stops have consistently comprised the largest percentage of law enforcement victims throughout the past decade.

²³Courts make the determination that the use of deadly force is objectively reasonable and that the shooting/death is justifiable in cases where a police officer discharges successive gunshots striking an individual multiple times when such standard is otherwise met. See Scott v. Heinrich, *supra*, wherein the suspect was shot four times; Foster v. City of Fresno, 392 F.Supp. 1140 (No. District. CA. 2005) wherein suspect was shot four times in rapid succession; Baldridge v. city of Santa Rosa, 1999 U.S. Dist. Lexis 1414 (No. District CA. 1999) wherein the officer shot the suspect three times killing him.

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The factual scenario in Scott v. Heinrich, 39 F.3d 912, 915 (9th Cir. 1992) is helpful to the analysis in the instant case. There, police officers responded to a shots fired call and confronted a suspect at his front door. Upon opening the door, the suspect pointed a gun at the officers. One of the officers shot the suspect four times after the first officer shot and missed him. In upholding the use of deadly force as reasonable, the court held:

"... as the text of the Fourth Amendment indicates, the appropriate inquiry is whether the officers acted reasonably, not whether they had less intrusive alternatives available to them (cites omitted). Requiring officers to find and choose the least intrusive alternative would require them to use superhuman judgment. In the heat of the battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and only that option. Imposing such a requirement would inevitably induce tentativeness by the officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment"

The Supreme Court recently discussed the use of deadly force in Brosseau v. Haugen, 543 U.S. 194, 1255 S.Ct. 596 (2004). In Brosseau, supra, the Court reiterated the holding of Graham v. Connor, supra, and stated:

"There is no doubt that Graham v. Connor, supra, clearly establishes the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness. Yet that is not enough. Rather, we emphasized in Anderson [v. Creighton] 'that the right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.' 485 U.S. [635] 640, 97 L.Ed.2d 523, 107 S.Ct. 3034 [1987]. The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that

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his conduct was unlawful in the situation he confronted." Id., at 201-202, 150 L.Ed. 2d 272, 121 S.Ct. 2151.

In this context, the Court also held that: "The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application." Graham v. Connor, 490 U.S. at p. 396. This was reiterated in Ting v. United States of America, 927 F.2nd 1504 (4th Cir. 1991).

And further, additional Federal cases cited in Brosseau, supra, held: ". . . that this area is one in which the result depends very much on the facts of each case. . . ." See Estate of Phillips v. City of Milwaukee, 123 F.3d 586I, 592 (7th Cir. 1997).

Numerous other Federal Appellate Court cases discuss officer involved shootings of suspects in specific factual situations. Ting v. United States of America, 927 F.2d 1504 (9th Cir. 1991) is one such case. This and similar 9th Circuit Appellate Court cases are particularly instructive since California is within the jurisdiction of the United States 9th Circuit Court of Appeal. See also Curnow v. The Ridgecrest Police, 952 F.2d 321 (9th Cir. 1991).

Ting, supra, involved the shooting of a suspect by FBI agents. Therein, at pp. 1509-10, citing Graham v. Connor, supra, the court held:

"Determining the 'reasonableness' of the force used to effect an arrest or seizure 'requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.' Id. (Quotations omitted) Factors to consider include 'the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.'" Id. at 1872.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene. Id. 'The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.' Id. Nevertheless, the reasonableness inquiry is an objective one: the question is whether the officers' actions are 'objectively reasonable'

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in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id.

"Applying the Fourth Amendment 'reasonableness test in Tennessee v. Garner, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985), the Court held that:

". . . 'Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.'"

Ting, supra, discussed the application of California law and held, at p. 1511:

". . . at the time of [a] shooting that an officer could use deadly force to effect an arrest if, under the circumstances, he reasonably believed such force was necessary to protect himself or others from death or serious bodily harm." See, e.g., Kortum v. Alkire, 69 Cal.App.3d 325, 333, 138 Cal.Rptr. 26, 31 (1977).

Further, the Ting court held, at p. 1513:

"Under California law, ' . . . an arresting officer may use such force as is reasonably necessary to effect a lawful arrest.' David v. City of Los Angeles, 173 Cal.App.3d 944, 957, 219 Cal.Rptr. 570, 576, (1985). . . ."

Under this factual scenario, the court in Ting, supra, cited the principles enunciated in Tennessee v. Garner, supra, and Graham v. Connor, supra, which established that claims of excessive force are to be judged under the Fourth Amendment's "objective reasonableness" standard. Ting, supra, also cited Garner case, at p. 11, which held that: ". . . where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force..."

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III.

CONCLUSION

In this case the officers responded to a residence to arrest Pope for a violation of Penal Code Section 273.5, willful infliction of corporal injury on a co-habitant. Prior to their arrival, Officer Kasfeldt and the other officers possessed specific information regarding Pope, including his past law enforcement training, his prior violent criminal conduct, his threatening and violent state of mind; his possible possession of a high power rifle and ammunition; his death threat to the female victim; and other factors discussed above.

After the officers arrived, Pope exited the apartment unit with a rifle and presented an immediate, clear, and present danger of serious bodily injury or death directed at Officer Kasfeldt and to the other officers who were present. Pope did not heed the several commands of Officer Kasfeldt to drop the rifle. Instead, Pope raised the rifle in a position to both aim and fire, as Pope walked from the apartment unit onto the landing and was located in a position above and superior to the officers. Officer Kasfeldt knew that the particular rifle that Pope possessed was powerful enough to penetrate the apartment building walls and not only kill him (Officer Kasfeldt) but also injure or kill his fellow officers who were near by. These facts were directly presented to Officer Kasfeldt. It was obvious that Officer Kasfeldt was in fact a peace officer, was in uniform, and was engaged in the performance of his duties. Notwithstanding, Pope continued his aggressive, assaultive, and deadly conduct directed immediately at Officer Kasfeldt.

This threat of immediate danger significantly escalated as Pope raised and pointed the rifle directly at the officer as he and Officer Kasfeldt's eyes made contact. Only then, after giving several loud and clear warnings to drop the rifle, did Officer Kasfeldt fire his weapon. It is important to note that the entire event took only several seconds during which time Officer Kasfeldt and the other officers were placed in a tense, quickly changing, highly dangerous situation, which required an extremely quick reaction and decision to use deadly force in response to Pope's use of deadly force.

Without question, the inescapable conclusion is that Pope engaged in violent felonious criminal conduct directed at a peace officer in the performance of his duties, most evidently when he pointed the rifle at Officer Kasfeldt at an extremely close distance and appeared ready to fire. This heightened an already tense, threatening, uncertain and fast-moving situation.

Hence, pursuant to statutory and case law, Officer Kasfeldt acted in an objectively reasonable fashion in using deadly force by discharging his weapon and shooting Pope.

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Consequently, Officer Kasfeldt, as well as the other officers who were present, were not in violation of any criminal law. Hence, the killing was justified. Therefore, our office will take no further action.

Very truly yours,

Gerald T. Shea
District Attorney


Daniel A. Hilford
Assistant District Attorney

cc: John Couch, Chief, Atascadero Police Department



CITY OF ATASCADERO POLICE DEPARTMENT

Dedicated To Professional Service



JOHN G. COUCH
Chief of Police

NEWS RELEASE January 30, 2007

The Atascadero Police Department announced today that the internal investigation into the shooting of Richard Daniel Pope by Officer Wyatt Kasfeldt on November 18, 2006 is complete. The internal review is intended to review the nature of the police actions to determine if they were conducted in accordance with established policy and procedures. The internal review took into consideration the independent criminal investigation conducted by the Office of the District Attorney and the criminal investigation conducted by the Atascadero Police Department.

The internal investigation revealed that the actions of Officer Kasfeldt and other officers involved were conducted appropriately within the established policies and procedures related to use of force. Officer Kasfeldt, who had returned from paid administrative leave to work a modified assignment, will be restored to full duty.

According to Police Chief John Couch, "The investigations into the actions of the suspect and officers involved were extensive and thorough. Investigations of this magnitude are necessary to maintain the public trust of law enforcement."

The conclusion of this investigation underscores the professional interagency cooperation among the Office of the District Attorney, the Sheriff's Department, Medical and Fire agencies and local law enforcement in San Luis Obispo County.

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John G. Couch
Chief of Police

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OFFICE OF THE DISTRICT ATTORNEY County of San Luis Obispo



NEWS RELEASE District Attorney Gerald T. Shea San Luis Obispo County

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FOR IMMEDIATE RELEASE

**CONTACT PERSON:
ASSISTANT DISTRICT ATTORNEY DAN HILFORD**

January 26, 2007

(805) 781-5800

The District Attorney's Office announced today that it has completed its independent investigation and review of evidence in connection with the November 18, 2006, shooting death of Richard Daniel Pope by an Atascadero police officer. Our office has concluded that there is no evidentiary support for any criminal legal action against the officer since the shooting and death were justifiable under the circumstances.

On the afternoon of November 18, 2006, at approximately 12:40 p.m., the Atascadero Police Department took a crime report from the woman with whom Mr. Pope had had a relationship. She and Pope resided together at an apartment complex located at 9377 Bocina Lane located at the south end of the City of Atascadero. The female victim reported that on the previous day (November 17th) Pope had held her against her will and had committed an act of physical abuse against her inside their apartment unit. She also said that on November 16th he had angrily punched holes in the apartment walls. The victim expressed fear of Pope. She reported that she possessed a large caliber hunting rifle with a scope as well as ammunition for the rifle in the apartment. She also stated that Pope had once been a police officer and had received special training. She further reported that Pope had threatened to kill himself in the

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past. The victim informed the officer that she had left a telephone message on the answering machine in her and Pope's apartment unit that morning telling Pope that she wanted him out of the apartment and that she would return with the police. The female victim gave Atascadero police officers permission to enter her apartment to both check the welfare of Pope and to take her rifle and ammunition for safe keeping. Thereafter, at approximately 2:00 p.m., Atascadero police officers obtained an Emergency Protective Order (EPO) from a San Luis Obispo Superior Court Commissioner ordering Pope to immediately move out of the apartment and to stay away from the female victim.

Thus, on the afternoon of November 18, 2006, day shift officers from the Atascadero Police Department went to the female victim's apartment to contact Pope and check on Pope's welfare, to serve the EPO, and to obtain the rifle and ammunition. The officers had a description of Pope's vehicle which they determined was not in the apartment complex parking lot nor was it in the immediate vicinity. After entering the apartment, the officers determined that Pope was not in the apartment unit. They determined that both the rifle and the ammunition were also missing. They also observed a large knife stuck into the kitchen wall as well as a hand written note from Mr. Pope threatening to kill the victim ("you are now a mark" (a sniper term)). The officers observed the apartment unit to be in disarray with various types of empty bottles that had contained alcohol located about the apartment. The officers also observed fist-size holes in various locations in the interior drywall.

Thereafter, an Atascadero police officer contacted the female victim by telephone. For her safety she was staying at a location which she believed to be unknown to Pope. Later that day at approximately 4:00 p.m., the officer discussed with her the officers' observations inside the apartment unit including the knife stuck into the wall, the threatening note, and the fact that

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the rifle and ammunition were missing. Upon receiving the information regarding the officers' observations inside the apartment, the female victim expressed additional fear for her safety, and additional belief that Pope may harm himself. The officer then put out a countywide law enforcement bulletin requesting other officers to be on the lookout for Pope and to detain and arrest him for committing assaultive offenses and for making criminal threats. The bulletin warned other officers regarding Pope's prior experience as a former police officer and for officers to be extremely cautious when approaching him due to Pope's likely possession of the high power rifle and ammunition.

When the night shift police officers reported for duty at 7:00 p.m. on November 18, 2006, the day watch officers briefed the night shift sergeant and other officers about Pope, his criminal assaultive conduct and threats toward the victim, his criminal history including crimes of violence, firearm offenses and two separate assaultive crimes resulting in prison sentences, his written note in the apartment threatening to kill her, the knife stuck in the wall, the holes punched in the wall, and his probable removal of a high powered hunting rifle (with a scope) and ammunition from the apartment. At this time the officers were also aware and discussed the fact that Pope had previously been convicted of felony assaultive crimes and as a result had been sentenced to prison. The officers also discussed Pope's self-destructive state of mind which heightened the officers' awareness of both the danger Pope presented as well as their need to exercise extreme caution if he were to be located.

One of the night shift officers re-contacted the female victim for further information and to check on her well being. The officers planned to check the apartment complex frequently during the night shift in order to make contact with and to arrest Pope. At approximately 9:00 p.m., while the officer was at the police station speaking with the female victim on the

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telephone, he simultaneously heard on the police radio that the shift sergeant was at the apartment complex and had observed Pope's vehicle parked in front of the apartment unit. The female victim informed the officer that one of her neighbors had called her and told her that Pope had returned and was now in the apartment unit. Fearing for the sergeant's safety, the officer left the police station to assist the sergeant.

Upon the officer's arrival at the apartment complex he met and discussed the situation with the sergeant. The sergeant called an additional Atascadero police officer to assist and called the Sheriff's Department to dispatch deputies for mutual aid assistance. Shortly thereafter, the additional Atascadero police officer and four uniformed Sheriff's deputies arrived. They all met and discussed setting up a perimeter as well as discussed other plans to attempt to safely get Pope to leave the apartment unit in order to arrest him without incident. The officers discussed evacuating the apartment complex as well as requesting additional assistance in the event that Pope did not willingly come out of the apartment unit. The Sheriff's deputies were directed to locations in both the front and back of the apartment complex to cover areas of possible escape by Pope.

One of the Atascadero police officers quickly moved his patrol car to a position to block Pope's vehicle in order to prevent Pope from using it to escape. After moving his patrol car, the officer removed a rifle from his patrol car and took a position at a corner of the apartment complex next to an outside corridor in which the stairway leading to Pope's upstairs apartment was located. One of the other Atascadero officers also obtained the rifle from his patrol car. While it was dark due to the time of night, the outside of the apartment complex, including the parking lot and outside corridors and stairways, was very well lit with bright lights.

The sergeant obtained Pope's telephone number from the police department dispatcher. He telephoned the number to try to make contact with Pope. The sergeant called the telephone number twice in succession and let the phone ring numerous times with no answer. (At that time the officers did not know that the telephone had been disabled but still rang when it was called.) The officers discussed other methods to gain Pope's attention. The officers decided not to approach the apartment unit door for officer safety reasons. They decided to use a tactic to simulate knocking on Pope's apartment door by throwing rocks against the door from a distance in order to gain Pope's attention and to possibly cause him to come outside the apartment unit.

One of the officers threw three rocks in quick succession against the upstairs front door from his location downstairs near the corner of the outside corridor. The other two Atascadero police officers remained behind the corner. Each of the rocks hit the door, made a knocking sound, and bounced off. The officer who threw the rocks then resumed a crouching position at the downstairs corner of the outside corridor. The officer continued looking up the outside stairway at the front door of Pope's apartment unit. The area was very well lit by bright lights in the outside corridor of the apartment building. The sergeant again called Pope's telephone to attempt to talk with him and to ask him to come out and surrender. The telephone rang numerous times without being answered. The Sheriff's deputies remained in their previous positions in the front and rear of the apartment complex, but not immediately near the Atascadero officers.

After approximately 30-45 seconds of silence after the officer threw the rocks, the same officer, still in a crouching position, saw the door to Pope's apartment unit open. The officer was wearing a full police uniform consisting of dark pants and a dark shirt with a badge, name plate, and departmental patches on the shoulders. While looking upstairs from his position the

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officer then stood up. As the door to the upstairs apartment opened the officer could see that the inside of the apartment unit was dark. The officer immediately and clearly saw a male who he recognized as Pope from seeing Pope's photograph at the earlier briefing. The officer could see Pope holding a high caliber rifle in Pope's right hand with Pope's finger near the trigger. The officer saw that the rifle had a scope with the dust covers on each end in the "up" position thereby allowing Pope to use the scope to sight and to aim the rifle. The officer, while pointing his rifle at Pope, yelled loudly for Pope to drop the gun. Pope continued to walk outside of the apartment unit onto the upstairs stairway landing. The officer could see that Pope was holding a rifle which appeared to be the same type of rifle that the female victim had described. The officer could also see that the bolt action mechanism of Pope's rifle was in the forward and locked position, thereby appearing ready to fire. Pope's finger remained near the trigger.

This same officer, who was located approximately 25-30 feet from the landing where Pope stood, was now in a standing position and had most of his body exposed to Pope's view. The officer was standing in the well lit outside corridor directly under a light that illuminated the uniformed officer. Pope looked directly at the officer as Pope was moving the rifle up to a shooting position in an upward sweeping motion and pointed the rifle directly at the officer. The officer yelled loudly two more times for Pope to drop the gun. Pope stood in a shooting position pointing the rifle directly at the officer from a higher and superior position than the officer's position. Pope continued to look directly at the officer.

The other officer who was located around the corner and behind the officer at whom Pope was pointing the rifle looked around the corner and up the stairway and saw Pope pointing the rifle at his fellow officer and recognized the extreme danger that Pope presented. The officer at whom Pope was pointing the rifle knew that the high caliber rifle that Pope

possessed was extremely powerful, capable of both killing the officer as well as shooting through the walls of the apartment building where the other officers were located around the corner of the building. Based on Pope's actions and his ignoring the officer's three separate commands to drop the gun, the officer had immediate fear for his life and safety and that of his fellow officers. Based on the officer's immediate fear that Pope was going to shoot him and his fellow officers, the officer fired five bullets in quick succession striking Pope's upper body. Pope did not fire the rifle he was pointing at the officer.

When Pope was shot he fell backward into the open door of his apartment unit. Pope was lying on his back with the rifle barrel pointing outward. The two officers who did not fire their weapons went up the steps while the officer who had shot Pope remained downstairs and continued to order Pope to drop the gun and to show his hands. One of the two officers who ascended the stairs took the rifle from Pope. Paramedics were called to the scene. Pope was taken by ambulance to Twin Cities Hospital where he was pronounced dead at 10:56 p.m.

The rifle that Pope was holding was examined after the shooting incident. It was determined to be a .308 caliber rifle and in an operable condition. There was a bullet in the chamber, the magazine was loaded with bullets, the dust covers on the scope were in the "up" positions, and the bolt action mechanism was in the forward and locked position consistent with the rifle ready to be fired. The safety mechanism of the rifle was in the "on" position but could easily have been made ready to fire by Pope.

An autopsy was performed on Pope by a forensic pathologist who found that Pope was shot five times in his upper torso and body. Gunshot wounds to Pope's body were consistent with him holding and pointing a rifle at the officer from a location above the officer's position. Pope's blood alcohol level was determined to be .35%. [For reference, this blood alcohol level is

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over four times the level which establishes a presumption of intoxication with regard to driving under the influence.] The cause of death was determined to be exsanguination (blood loss) due to multiple gunshot wounds.

Both California statutes as well as both California and Federal Appellate court cases which interpret these statutes allow a peace officer to use deadly force when an officer has probable cause to believe that an individual poses a significant threat of death or serious physical injury to the officer or to another. The courts have established that the test in cases of the use of deadly force by a peace officer is an "objectively reasonable" standard. That is, the particular use of force must be judged from the perspective of a reasonable officer on the scene considering the totality of the circumstances. When applying this standard courts also recognize that police officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving.

Based upon the totality of the circumstances that were presented to the officer, including but not limited to, Pope's previously assaultive behavior, his threats made to the female victim, his punching holes and sticking knife into the wall of the apartment, the quick moving sequence of actions initiated by Pope by pointing the rifle directly at the uniformed officer and appearing ready to shoot the officer after Pope was ordered multiple times to drop the weapon, the officer did in fact respond in an objectively reasonable manner in the use of deadly force.

Therefore, based upon both the facts and applicable law, our office has determined that the shooting death of Mr. Pope was justifiable. Hence, the District Attorney's office will take no further action in this matter at this time.

For additional information, contact Assistant District Attorney Daniel Hilford.